IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
[Chapter VIII, Rule 32 (2) (b)]
Description of case

Writ Petition No. 908 of 2005 (M/B)
Decided on: May 17, 2006

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date: 17.05.2006

(Initial of Judges)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 908 of 2005 (M/B)

Smt. Suman
W/o Shri Dheer Singh
Pramukh Kshettra Panchayat, Block Narsan
Tehsil Roorkee
District- Haridwar. ……Petitioner

Versus

1. State of Uttaranchal through Secretary
   Panchayat Raj, Dehradun.
2. Additional Secretary Panchayat Raj
   Govt. of Uttaranchal, Dehradun.
3. District Magistrate, Haridwar
   District Haridwar.
4. Braham Pal Singh
   S/o Late Devi Singh
   Senior Up-Pramukh Kshettra Panchayat, Block Narsan
   Tehsil- Roorkee, District- Haridwar. ……Respondents

Mr. Arvind Vashisth, learned counsel for the petitioner.
Mr. Subhash Upadhyaya, learned Standing Counsel for respondents No. 1 to 3.
Mr. S.K. Mandal, learned counsel for respondent No. 4.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of Constitution of India, the petitioner has sought writ in the nature of certiorari quashing the impugned orders dated 15.07.2005 (Annexure- 12 to the writ petition), passed by respondent No. 1 and order dated 29.07.2005 (Annexure- 15 to the writ petition), passed by respondent No. 3, whereby

financial powers of the petitioner, a Block Pramukh, has been withdrawn, and a committee has been constituted to exercise the powers under Section 16 of U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961.

2. Brief facts of the case, as narrated in the writ petition are that the petitioner was elected Pramukh of Kshettra Panchayat of Block Narsan (District- Haridwar) through the elections held in the year 2000. Some complaints were made against the petitioner to the Government and District Administration Officer, which according to the petitioner, are false and frivolous. The first Informantion Report (copy Annexure-1) was lodged on 24.07.2002 by Additional Sub Divisional Magistrate, Roorkee with Police Station, Manglore, on the basis of which crime No. 266 of 2002, was registered under Section 3/7 of Essential Commodities Act, 1955, against the petitioner and her husband. According to the allegations in the First Information Report, 350 quintals of wheat was recovered from a godown, where it was allegedly kept for being sold in black market by the husband of the petitioner. The wheat was actually required to be distributed among the labourers as wages for the work done by them under certain schemes. According to the petitioner, she has nothing to do with the incident and she challenged the First Information Report and obtained an interim order from this Court. However, a charge sheet (Annexure-7) regarding offence under Section 3/7 of Essential Commodities Act, 1955 and under Section 420, 406, 409 and 120 B of Indian Penal Code was submitted against the petitioner, her husband and her brother-in-law. Petitioner alleges that rival political group working against her is bent upon to harass her. Said group got a show cause notice dated 08.06.2004 (Annexure-10) issued against her to show as to why action under Section 16 (1) of U.P. Kshettra Panchyats & Zila Panchayats Adhiniyam, 1961, be not taken against her. The petitioner replied the said notice on 26.07.2004 (copy Annexure-11). It is further alleged that thereafter, nothing was

transpired and without making any enquiry as required under U.P. Kshettra Panchayats and Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adyakshas and Upadhyakshas) Enquiry Rules, 1997 (herein after referred as the Rules), impugned order dated 15.07.2005 (Annexure- 12) was passed by respondent No. 1 regarding decision to withdraw financial powers of the petitioner as Block Pramukh. Vide order-dated 29.07.2005 (Annexure- 15), District Magistrate communicated the appointment of three members Committee (which included respondent No. 4) to exercise the financial and administrative powers of Block Pramukh. It is alleged in the petition that respondent No. 4- Shri Braham Pal Singh used his political clout to exercise the powers of the office held by the petitioner. Challenging the impugned orders on the ground that the same were passed in violation of the law, this petition was filed by the petitioner.

3. Separate counter affidavits were filed on behalf of respondents No. 3 and 4, apart from an affidavit filed on behalf of respondent No. 1. According to the counter affidavit filed on behalf of respondent No. 3, it is admitted that the petitioner was elected as Block Pramukh. It is also admitted that complaints were received against the petitioner and her husband, and a First Information Report was also lodged. However, it is denied that the complaints or the First Information Report, were false. It is stated in the counter affidavit that the powers under Section 16 of U.P. Kshettra Panchayats & Zila Panchayats Adhiniyam, 1961 (for brevity herin-after the Act), were exercised after giving due show cause notice to the petitioner and impugned orders were passed after considering her reply to the notice. In the affidavit filed on behalf of respondent No. 1, an enquiry was conducted in accordance with the provisions of the Act and the Rules.

4. Respondent No. 4 in his separate counter affidavit has stated that the petitioner has concealed the material facts from

the Court. It is alleged by him that Madan Singh Kundra, Additional District Magistrate inquired into the complaint made by him (respondent No. 4). Copy of said enquiry report is annexed as S.C.A.-1 to the short counter affidavit. It is further stated in the counter affidavit by the answering respondent that enquiry was in conformity with the provision of Section 16 of the Act, and the financial powers were rightly withdrawn from the petitioner. In the supplementary counter affidavit filed by him, names of the eyewitnesses of the fact of blackmarketing of wheat by petitioner and her husband, are disclosed as Jagpal Singh, Ram Pal Singh, Yashveer Singh, Manga, Omveer and Ravindra, who filed notary affidavit before the District Magistrate. In another supplementary counter affidavit, respondent No. 4- Braham Pal Singh has stated that the proceedings of criminal case pending against the petitioner and her husband got stayed by them by moving a petition under Section 482 of Code of Criminal Procedure, 1973.

5. We heard learned counsel for the parties and perused the affidavit, counter affidavits and rejoinder affidavits filed by them.

6. Before further discussions, it is pertinent to mention here the relevant provisions of law applicable to the case. Section 16 of U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961, which provides for removal of Pramukh or Up-Pramukh of Kshettra Panchayats, reads as under:-

"16. Removal of Pramukh or Up-Pramukh- *(1) If in the opinion of the State Government the Pramukh or any Up-Pramukh of a Kshettra Panchayat willfully omits or refuses to perform his duties and functions under this Act, or abuses the powers vested in him or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties, the State Government may, after giving the Pramukh or such Up-Pramukh as the case may be, a reasonable opportunity for explanation and after consulting the Adhyaksha of the Zila Panchyat concerned in the*

matter and taking into consideration his opinion, if received within thirty days from the date of the dispatch of the communication for such consultation, by order, remove such Pramukh or Up-Pramukh, as the case may be, from office, and such order shall be final and not open to be questioned in a Court of law:

Provided that where, in an enquiry held by such person and in such manner as may be prescribed, a Pramukh or Up-Pramukh is prima facie found to have committed financial and other irregularities, such Pramukh or Up-Pramukh shall cease to exercise and perform the financial and administrative powers and functions, which shall, until he is exonerated of the charges in the final enquiry, be exercised and performed by a committee consisting of three elected members of the Kshettra Panchayat appointed in this behalf by the State Government.

(2) A Pramukh or Up-Pramukh, removed from his office under this section, shall not be eligible for re-election as Pramukh or Up-Pramukh for a period of three years from the date of his removal."

7. Admittedly, a show cause notice (Annexure-10 to the writ petition), was issued to the petitioner under Section 16 (1) quoted above. It is also admitted in the writ petition that a reply (Annexure-11) was submitted by the petitioner to said show cause notice. Impugned order dated 15.07.2005 (copy Annexure-12) to the writ petition) appears to have been passed withdrawing the financial powers of the petitioner from the office held by her, after considering the reply submitted by her. Another impugned order dated 29.07.2005 (Annexure-15 to the writ petition), shows that a Committee was constituted under proviso to Section 16, quoted above, for exercising the financial and administrative powers of Pramukh, Kshettra Panchayat, Narsan.

8. Shri Arvind Vashisth, learned counsel for the petitioner, drew attention of this Court to Rule 3, Rule 4, Rule 5 and Rule

6 of U.P. Kshettra Panchayats and Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adyakshas and Upadhyakshas) Enquiry Rules, 1997 and contended that the procedure prescribed under the Rules was not followed by the authority before passing the impugned orders. Rule 3 of said Rules provides that the complaint against the Pramukh of Kshettra Panchayat shall be accompanied with the affidavit in support thereof. Supplementary counter affidavit, filed on behalf of respondent No. 4- Shri Brahma Pal Singh in February, 2006, shows that as many six persons filed their affidavits against the petitioner alleging that she and her husband are involved in black marketing of wheat, which was required to be given to the labourers under 'Kam Ke Badley Anaj' Scheme. The names of the persons who filed the affidavits are mentioned as Jaspal Singh, Ram Pal Singh, Yashveer Singh, Manga, Omveer and Ravindra. A preliminary enquiry as required under Rule 4 also appears to have been done as is clear from the enquiry report of Madan Singh Kundra, Additional District Magistrate, Haridwar, which is Annexure- S.C.A. –1 to the supplementary counter affidavit filed on behalf of the respondent No. 4. As such, it cannot be said that the enquiry was not done or the proviso to Section 16 quoted above was not attracted which empowers State Government to withdraw the financial and administrative powers of Pramukh of Kshettra Panchayat, and to constitute a Committee to perform the functions of Pramukh relating to the financial and administrative powers.

9. Learned counsel for the petitioner argued that the petition was falsely implicated due to the political rivalry with respondent No. 4- Brahma Pal Singh. Be as the case may, the fact remains that there were serious complaints and there was an enquiry regarding which Government had material to satisfy itself to exercise powers under Section 16 of U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961. It is also pertinent to mention here that after the godown where the petitioner's husband had stored 350 quintals of wheat

unauthorizedly for being sold in the black market, admittedly a First Information Report was lodged against both the petitioner and her husband. It is also admitted fact that charge sheet was submitted in said crime and they are facing trial, which is stayed by this Court on petition under Section 482 of the Code of Criminal Procedure, 1973.

10. For the reasons as discussed above, we are of the view that there is no illegality in passing the impugned orders on the part of the respondents No. 1 and 3, which requires interference by this Court. Accordingly, the writ petition is liable to be dismissed and the same is here by dismissed.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt: 17.05.2006
Sweta